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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1318th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1318/Add.1.

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth and thirteenth periodic reports of Peru (continued) (CERD/C/298/Add.5; HRI/CORE/1/Add.43/Rev.1)

1. At the invitation of the Chairman, the members of the Peruvian delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the Peruvian delegation to respond to questions asked by members of the Committee at the previous meeting.

3. Ms. VALENZUELA de PUELLES (Peru) said that modern-day Peru, the product of a mixing of races and cultures, followed a policy of full respect for human rights. Both its Constitution and its laws embodied the fundamental principles of respect for the human person and for equality among human beings irrespective of race, sex, language and religion. Throughout its history, Peru had safeguarded the habits and customs of indigenous communities while prohibiting their relocation to any environment other than their natural milieu. The indigenous communities from mountain regions, the "panacas", lived according to their traditions in dwellings that were admittedly precarious, but they nevertheless possessed land and animals. The Government was aware that those communities could not achieve all-round, sustainable development as long as the necessary infrastructure such as communication lines, hospitals and health services had not been set up. It was now working to establish a network of schools throughout the country and in particular was planning to build primary schools and secondary schools in the remotest areas of the country.

4. There was no racial discrimination in Peru. No "pure race" existed in the country, since all the races had mingled over the years. Of course there were exceptions to that rule, to be found in certain communities that resisted intermarriage, as much as possible, such as the Quechua, Aymara and Coyagua and the indigenous communities of the Amazon like the Chipibos. Because of racial mixing, there was no black race, strictly speaking, in Peru, and although the term "negrito" was in use, it must not be understood in the pejorative sense but rather as an affectionate term. Neither was there any discrimination against Asians in Peru, as demonstrated by the composition of the Government: the President, Mr. Alberto Fujimori, was of Japanese origin, as was the Minister for Energy, and the Prime Minister was of Chinese extraction. She herself was a member of the Quechua race and there were many mixed-race, Chinese and indigenous members of Parliament.

5. It was not because certain regrettable and isolated incidents had occurred and the news had travelled beyond Peru's borders that the Government had in any way, even to the smallest degree, failed to respect human rights.

6. Mr. ARMAS BENGLERI (Peru) explained that Peru had lived through very regrettable events that had come close to discrediting it in the eyes of the international community. Yet never before the previous century had the country had to bear such a heavy economic burden. The economic revolution had

taken place gradually and the country had had to adjust, while its population had had to struggle to survive. The entire country was aware of what had happened and recognized that mistakes had been made. Peru's intention was not to close its eyes to the abuses of the past but to face up to reality, including by taking account of its complex ethnic situation. Peru which was determined to follow a policy of wealth redistribution, could be proud of the fact that its currency reserves were currently equivalent to US$ 10 billion.

7. The population had grown from some 22 million in 1993 to nearly 28 million today; 70 per cent spoke Spanish and 17 per cent were bilingual, while Quechua was spoken by around 10 per cent of the population.

8. Peru had nothing to hide and was ready to describe its current situation and the difficulties it was facing.

9. Mr. DIAZ CAMPOS (Peru) said that he headed a criminal court in the north of the country and that in 1980, a state of exception had been instituted in certain areas owing to terrorist violence carried out by rural movements determined to put in place a totalitarian regime. In accordance with that decision by the Government, which was in conformity with the Constitution, the army had been accorded political and military control in such areas. Some movements such as the Tupac Amaru had tried to recruit peasants by force. Act No. 25475 governing criminal investigation, prosecution and decisions in cases of terrorist violence had been amended to reflect the temporary nature of the criminal provisions applicable to states of emergency. The Supreme Court as well as the President of the Republic had been given the authority to pardon peasants and members of indigenous communities who had been accused of the crime of terrorism. The Government had set up an ad hoc committee to investigate all cases of individuals accused of such crimes and to grant pardons. To date, several hundred individuals had benefited from the clemency of that body.

10. Thanks to the Government's anti-subversion policy, in the past four years many indigenous communities had been able to return to the land that they had had to leave because of the terrorist threat.

11. Article 139 of the Constitution stated that the judicial branch had exclusive authority for the administration of justice, although it also recognized the competence of military courts when there was a threat to society, either through treason or through terrorism.

12. Peru possessed a legislative framework that gave all Peruvians access to legal services free of charge. Article 139, paragraph 2, set out the principle that judicial proceedings were free of charge in criminal courts and labour conflicts. The sole exception to that principle was cases brought to civil courts, for which there were appropriate legal institutions.

13. Peru had courts of first instance, both civil courts and criminal courts, in all provinces, and justices of the peace in all districts.

14. As part of the revision of the judicial system, in nearly all judicial districts the Government had established itinerant "halls of justice" that travelled to the country's remotest areas. Itinerant indictment divisions had

been created in order to avoid the transport to the seat of higher courts and hence, the humiliation of persons under detention order. The number of escape attempts and acts of violence against detention staff had thereby been considerably reduced.

15. Peru intended to pursue at both the internal and external levels the process of judicial reform that it had undertaken. Only if the country had honest judges with a solid training would it have an effective system of justice similar to that of more advanced countries.

16. Mr. CHAVEZ (Peru) said that 50 per cent of the Peruvian population was living in poverty, 20 per cent in extreme poverty. The matter was considered to be of relevance to the entire nation and the Government was treating it as a priority. Until 1990, the characteristic feature of economic policy had been redistribution of poverty rather than of wealth. Since then, economic policy had changed, facilitating economic renewal and laying the groundwork for lasting growth. With an annual growth rate of 5 per cent, Peru was now the Latin American country that had grown the most in the past four years. In 1998, despite the international crisis, the growth rate had been 2 per cent, which attested to the solidity of Peru's economic foundations. Such sustained growth should promote the gradual creation of wealth to profit broad sectors of the population.

17. It was false to claim that the country's social spending had declined, given that 40 per cent of public expenditure went to the most underprivileged sectors.

18. To speak of inequality in the distribution of wealth was to engage in a sterile discussion that went nowhere, for the phenomenon existed in all countries of the world and in much greater proportions than in Peru, as well as between all countries. Perhaps such inequalities were more visible in Peru, which was a developing country.

19. In response to the questions by the Special Rapporteur on the hierarchical relationship between the Peruvian Constitution and the human rights treaties, he said it was true that the 1979 Constitution had given the treaties constitutional status, and that that provision had not been reproduced in the new Constitution of 1993. But the legal value given to international conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination, remained proportional to the importance of those instruments. To begin with, article 55 of the Peruvian Constitution stipulated that treaties approved by the State were part of national legislation, in other words they were automatically incorporated in internal law upon ratification. Second, only major treaties that could have an impact on the integrity of the State or on its financial obligations or national defence had to be approved by Congress before being ratified by the President of the Republic. International human rights treaties were among those instruments, which indicated the status that they were given within the Peruvian legal order.

20. Finally, the fourth concluding provision of the existing Constitution stipulated that "provisions relating to the rights and freedoms set out in the Constitution must be interpreted in conformity with the Universal Declaration of Human Rights and the relevant international treaties and agreements ratified by Peru".

21. Thus, treaties retained the same rank as in 1979.

22. He wished to give some additional information on the institution of the Ombudsman, who was elected by Congress for a period of five years, the required majority being two thirds. It was a person capable of forging a consensus because of his personal and professional qualities; once elected, he could not be removed by the Government. He had full authority and, under articles 161 and 162 of the Constitution, public bodies including the armed forces and the police were required to cooperate with him. He was responsible for the defence of the fundamental rights of the human person and the community by ensuring, inter alia, that those rights were respected by the civil administration and in the provision of public services. Protection of the rights of peasant and indigenous communities was also part of his mandate.

23. Although the Ombudsman had no jurisdictional or enforcement competence, he was authorized to carry out investigations at all levels of public administration. He played a mediator's role and could intervene in constitutional or administrative procedures to protect the rights of individuals. His activity did not come to a halt when a state of emergency or of exception had been decreed and he had a particularly important role to play during those periods.

24. He could take legislative initiatives and bring an action on the grounds of unconstitutionality or for habeas corpus or amparo. He also concerned himself with the registry of persons detained or sentenced to custodial penalties.

25. Every year, he submitted a report to Congress on his work: a copy of his most recent report would be transmitted to the Committee.

26. The Ombudsman was highly esteemed both in Peru and internationally: at the third annual congress of the Ibero-American Federation of Ombudsmen, held at Lima in September 1998, he had been chosen as head of the Federation.

27. Mr. FIGUEROA NAVARRO (Peru) said he wished specifically to address the questions on the application of article 4 of the Convention.

28. As his delegation had explained in its introduction, a major discussion had been launched on the possibility of making all acts or words that were racist or discriminatory in nature criminal offences, since the provisions of the Criminal Code that were now applicable were deemed to be inadequate. Five preliminary drafts of legislation on discrimination and the criminal prosecution and punishment to which it could give rise had been submitted. The initiatives were considered by a parliamentary commission which could adopt or reject them or formulate counter-proposals. Three of the preliminary drafts had apparently been approved, and two of them were specially designed to curb incitement to racial hatred in all forms, including through

participation in racist activities or organizations. Such activities would henceforth be covered by article 317 of the Criminal Code, which as currently drafted dealt with associations of criminals.

29. The Peruvian Constitution, by establishing the principle of equality, prohibited not only all the forms of discrimination based on race, colour or national or ethnic origin that were cited in the Convention, but also discrimination based on other factors such as sexual proclivity, illness or disability.

30. Those responsible for such acts were subject to various penalties depending on the nature of the offence. Imprisonment was not the only type of penalty they faced: for example, they could be sentenced to civic service.

31. Racist associations were illegal and could be dissolved under article 5 of the Criminal Code. The articles of the Criminal Code which set out penalties for violence, provocation, insult and apology for offenders as well as bodily assault and other types of ill-treatment were applicable in general terms when such acts were inspired by racial motives.

32. Ms. VISCARRA ALVIZURI (Peru) said she was pleased that information from certain Peruvian non-governmental organizations (NGOs) for the defence of human rights had been placed side by side with the information provided by governmental sources. NGOs were entitled to participate in the activities of the Peruvian Council for Human Rights, which comprised representatives of various governmental institutions and of the Catholic Church. If the views of NGOS were not always heard at those meetings, it was because those organizations were not always present, despite the invitations that they regularly received.

33. With regard to ILO Convention No. 169 concerning indigenous and tribal peoples, Peru was proud to announce that it was the twelfth country in the world and the ninth Latin American country to ratify that instrument, which would make it possible to provide higher standards of protection for the country's indigenous peoples. A copy of the most recent communication that Peru had addressed to the International Labour Organization relating to that Convention would be submitted to the Committee's Chairman. The document contained detailed information that might be of interest to members of the Committee.

34. In that connection, she was surprised to hear that Peru was being blamed for not according the status of "indigenous peoples" to groups that in fact had no right to such a title. For the ILO, the term "indigenous" applied to populations that had conserved, fully or in part, their own traditions, institutions and lifestyles, which were set apart from the rest of society by their customs and which lived in a specific area. The definition essentially addressed a social situation and was not intended to establish priorities based on the ancestral rites of the "first inhabitants" of a land. As a consequence, the population groups to which Convention No. 169 was applicable in Peru were the peasant communities in the mountains ("campesinas") and the autochthonous communities in the jungle ("nativas"). The determining factor was being part of a well-defined community and living in that community. The State consulted such groups on everything that affected them and had set up

machinery specifically for that purpose. Consultations had been held in January 1998 in Yucay and June 1998 in Iquitos with the peasant and autochthonous communities.

35. With regard to the follow-up given to the Committee's General Recommendation XXIII (51) concerning Indigenous Peoples, she said the Peruvian Government considered that the Committee's views could indeed inform its work in the area of indigenous and autochthonous affairs but that at the same time it did not intend to renounce its independence of action. While it sometimes happened that its decisions coincided fully or in part with the opinions expressed by the Committee, the Peruvian Government did not consider itself bound to follow to the letter the recommendations formulated by CERD or any other treaty body.

36. Mr. VOTO-BERNALES (Peru), replying to members of the Committee who had referred to the country's "social and economic reality", said that the restoration of peace had been the prelude to any economic reconstruction effort. Everyone agreed that the action carried out by the new Government over the past nine years had been extremely beneficial. Significant institutional changes had facilitated better respect for human rights and the norms enshrined in international conventions. Various laws and provisions had been adopted to meet the needs of the most disadvantaged and provide them with better legal protection, including against racial discrimination. The Ombudsman was playing a very active role which was recognized at the international level.

37. Peru considered its multi-ethnic culture to be a source of wealth, and the integration efforts that were deployed at all levels - in the schools, in institutions, within the Government and in social and economic life - had the sole purpose of combating prejudice and exclusion.

38. Private initiatives adopted to supplement the work of the authorities by creating lodging, schools and jobs and to alleviate certain gaps in those areas (what had been called the "other way") attested to the spirit of solidarity on the part of the entire population and its mobilization to achieve a better future for all. Those initiatives were acknowledged by the Government and received its full support.

39. Ms. VALENZUELA de PUELLES (Peru) said she wished to state, in conclusion, that since President Fujimori's investiture, human rights had been respected in Peru, despite sporadic incidents of discrimination on which the delegation had provided explanations. There was no doubt that broad cultural diversity could give rise to minor instances of friction from time to time. Far from encouraging discrimination, however, the Government's policy was to combat it.

40. The new Government had restored the peace but was still facing all types of problems, including climatic ones, and must now focus its action resolutely on the economic and social development of the country.

41. Her delegation looked forward to receiving the Comittee's conclusions and recommendations and stood ready to provide any additional information that it might require.

42. The CHAIRMAN welcomed the fact that the Peruvian Minister for Justice had reversed previous statements according to which there was no racial discrimination in Peru. No country in the world could claim to be exempt from racial discrimination. What mattered was whether such discrimination was part of a Government policy - which was not the case in Peru - or whether it was simply attributable to ignorant and ill-intentioned individuals.

43. He wished to point out to the Peruvian delegation that the Committee was by no means a European body, even though it met in Europe and even if the geographical distribution among members might create a mistaken impression. The Committee was responsible not for enforcing European standards but for ensuring respect for the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

44. Mr. SHERIFIS said he wished to have some clarification on the question of displaced persons. In 1991, a technical commission had been established to try to resolve the problem, in 1993, a programme of support for displaced populations had been launched and in 1994, an inter-ministerial committee had been set up to harmonize the activities of the various ministries concerned. In the light of those initiatives, he would like to know whether the displaced persons had returned to their original domiciles of their own free will, and if so, whether they had recovered their property or, alternatively, had been provided with appropriate compensation.

45. The Committee was all the more concerned over the matter since most of the persons involved had been residents of mountainous regions or members of autochthonous groups. In 1996, the Committee had adopted general recommendations on the matter.

46. Ms. VALENZUELA de PUELLES (Peru) thanked the Chairman for his understanding and confirmed that the Peruvian Government was committed to respect for human rights, but that isolated cases of racial discrimination had occurred. That was why the Ministry of Justice was studying draft legislation aimed at avoiding the repetition of such events.

47. Returning to her earlier remarks, she explained that by mentioning Europe, she had not been likening the Committee to a European body but expressing the wish of the Peruvian authorities to see Peru develop socially, culturally and economically, like the most advanced countries on the European continent. She hoped that with the assistance of fraternal countries, that development objective could be achieved in the medium or long term.

48. Replying to Mr. Sherifis' question on the movements of populations fleeing terrorist repression, she said that around 15,000 individuals had returned to their place of origin with economic assistance from the Government and that 5,000 more individuals would soon be returning to their homes. The problem of displaced persons would accordingly be resolved step by step. Nevertheless, it was not autochthonous groups that had had to flee the terrorists, but rather mixed-race groups, principally from the Ayacucho region and the "red zone".

49. The CHAIRMAN invited the country rapporteur to sum up the debate on Peru.

50. Mr. de GOUTTES (Country Rapporteur) said that the multi-ethnic, multicultural and multilinguistic nature of Peru made it of particular interest to the Committee. He noted with satisfaction that the delegation had referred to the various population groups in respectful terms and had shown professionalism in its responses to the Committee's numerous questions. Addressing both NGOs and the Government, he said it would be useful to create a better dialogue between civil society and the authorities.

51. The delegation had demonstrated the Government's desire to overcome the various problems being faced by the country and its commitment to promoting the development of autochthonous, peasant and other population groups as well as the protection of their economic, social and cultural rights. Nevertheless, a number of points required further clarification: the latest figures on the population's ethnic composition; socio-economic indicators concerning the situation of autochthonous, peasant and African population groups; progress made by such groups in respect of each of the rights enumerated in article 5 of the Convention; legislative reforms undertaken to implement the provisions of article 4 of the Convention and provide penalties for all forms of racial and ethnic discrimination; the legal follow-up given to complaints by victims of racial discrimination; measures to furnish education on tolerance and inter-ethnic and inter-racial understanding for law enforcement officers; and measures to publicize the Convention and disseminate the Committee's reports and conclusions.

52. He hoped that that additional information would be provided in Peru's next report and congratulated the delegation on its spirit of cooperation and frank responses.

53. The CHAIRMAN, referring to the statistics required, said that States were requested to furnish statistics on the ethnic composition of their country if such statistics were available, although in certain countries, the legislation prohibited the collection of such statistics.

54. He thanked the Peruvian delegation for its excellent responses and expressed the hope that in its next report, Peru would be able to respond to the points that had not yet been clarified.

55. Ms. VALENZUELA de PUELLES (Peru) thanked the Committee for having given her delegation a chance to outline the situation in Peru. She assured the Committee that its observations and recommendations would be taken into account when the next report was drafted and that NGOs would be strongly urged to participate in future drafting exercises. She said she was very touched by the Committee's welcome and its encouragement.

56. The CHAIRMAN announced that the Committee had concluded its consideration of the twelfth and thirteenth periodic reports of Peru.

57. The Peruvian delegation withdrew.

The meeting was suspended at 11.55 a.m. and resumed at noon.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Statement by the Committee on the human rights of the Kurdish people (CERD/C/54/Misc.20/Rev.1 - document distributed at the meeting in English only)

58. The CHAIRMAN invited comment on the statement prepared by the open-ended Working Group set up for that purpose. Some members of the Committee would have liked the text to be more trenchant, but it reflected a consensus. It would be incorporated in the Committee's report and would be the subject of a statement to the press. A copy would be sent to the Ambassador of Turkey in response to his request.

59. The statement read:

> "The Committee on the Elimination of Racial Discrimination is profoundly alarmed about widespread and systematic violations of human rights inflicted on people because of their ethnic or national origin. Ethnic antagonisms, especially when mixed with political opposition, give rise to many forms of violent conflict, including terrorist actions and military operations. In many parts of the world they cause immense suffering, including the loss of many lives, the destruction of cultural heritage and the massive displacement of populations.
>
> In this context, the Committee expresses its concern about acts and policies of suppression of the fundamental rights and the identity of the Kurds as distinct people. The Committee stresses that the Kurdish people wherever they live should be able to lead their lives in dignity, to preserve their culture and to enjoy wherever appropriate a high degree of autonomy.
>
> The Committee appeals to the competent organs of the United Nations and to all authorities and organizations working for peace, justice and human rights, to deploy all necessary efforts in order to achieve peaceful solutions which do justice to the fundamental human rights and freedoms of the Kurdish people."

60. The CHAIRMAN said, if there were no objections, he would take it that members of the Committee wished to adopt the statement proposed by the Working Group.

61. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Organization of the work of the Committee

62. The CHAIRMAN announced that he had received a note from the Permanent Mission of Lesotho in which the Committee was requested to postpone consideration of that country's report. He suggested that the Committee

accede to that request and that the Secretariat contact the Permanent Mission of Lesotho to set another date for the report's consideration, preferably at the next session.

63. It had been drawn to his attention by some members of the Committee and many letters and communications received on the subject that the time allotted for the consideration of the situation in Australia was insufficient, insofar as major changes had taken place in that country and the situation was especially serious. He thought it would be desirable for the Committee to devote the necessary attention to the consideration of that country's report.

64. Since the consideration of the situation in Lesotho had been postponed, it would be possible to devote more time to consideration of the situation in Australia. The date for consideration of the Kuwait report should accordingly be changed.

65. He suggested that the Secretariat contact the two missions concerned in order to agree on new dates for the consideration of the reports and that the question be re-examined once that information was obtained.

66. If he heard no objection, he would take it that the members of the Committee wished to follow that course of action.

67. It was so decided.

The public part of the meeting rose at 12.15 p.m.